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21. Where the notary states he "*demand*ed payment of the draft, at the counting-house of the acceptor," it is sufficient, without saying the "*draft* was presented and payment thereof demanded."..... *ib.*

22. Where there is no absolute promise to pay by the endorser, with a full knowledge of the want of notice which in law creates a new obligation, he is not bound.....*Lambeth et al. vs. Petrovic*, 315

23. So, where the endorser admitted his liability after the note was due and protested; and that the time given to the maker of the note should not affect his liability; but it appeared he was in reality not liable at the time for want of due notice of protest: *Held*, that his acknowledgment did not bind him..... *ib.*

24. The holder of a note endorsed in blank by the payee and others, whose names precede that of the plaintiff himself, he may strike out all the subsequent and special endorsements and recover against the maker.

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Carrollton Bank vs. Tayleur et al. 490
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38. Acceptors of bills of exchange drawn on their letter of credit, addressed to the purchasers of the bills, are absolute acceptors, and not guarantors.
Bank of Illinois vs. Sloo & Byrne et al. 539
39. There is no law requiring, and it is not necessary that a notarial protest should be signed by two witnesses. This instrument requires no other signature than that of the notary who protests.
Wagner et al. vs. Hall, 563
40. A second endorser wishing to hold the first responsible to him, should give him notice of protest; and for this purpose the law gives him until the next day, to notify his prior endorser.
McCulloch vs. Commercial Bank, 566
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BONDS.

1. Judicial bonds, taken by the sheriff from persons in custody, must be executed in the manner authorized by law; any clauses that are superadded will be rejected, and those omitted supplied.....*Slocumb et al. vs. Robert*, 173
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3. In legal proceedings the penalty of the bond is fixed by the law or the court, and the law points out the objects for which it is given.

Welch & Co. vs. Thorn et al., 188

4. In this state, there being no distinction in the proceedings between the law and equity jurisdiction of our courts, the penalty of a judicial bond is disregarded, and judgment given for the damages which the party has really sustained..... *ib.*

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BROKER.

1. Uncurrent money left in the hands of a broker to sell at a discount, and taken by another broker, having dealings with and a creditor of the first, under pretence of selling it; he cannot appropriate it in payment of his debt without the consent of the other; but the true owner and original depositor will recover its value in his hands..... *Lallande vs. M-Master*, 527

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4. It will suffice to make service of citation on the agent, if the agency appear in or by the petition, but not otherwise..... *ib.*

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1. Where cotton is shipped to dry good merchants, with instructions to be sold on the levee, if ten and a half cents per pound could be had, and if not to store it, and the consignees immediately employ a broker to sample it, but not finding a buyer it is stored and soon after *destroyed by fire*: *Held*, that the consignees are *not liable*; although it is admitted the market price at the time of the arrival of the cotton was twelve and a half cents per pound.....*Gillet et al. vs. Theall*, 46
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Leserne & Edmondson vs. Cook, 58
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CONTRACTS.

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Flores vs. Lemee, Administrator, 271
2. In a commutative contract for the delivery of a quantity of coal for a certain price, to be paid in a particular manner, the whole contract to depend for its fulfilment on certain arrangements to be made by a kind of mutual agent, who failed to carry out the views of the parties: *Held*, that no damages are recoverable for the non-delivery of the coal.
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4. So, where the judge of probates failed or neglected to take down the testimony of the witnesses on the trial, and the record is brought up without it, the cause will be remanded for a *new trial*..... *ib.*
5. Where the judge of probates fails or neglects to take down the testimony of the witnesses in writing, according to the provisions of the 1042d

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Fenner vs. Watkins et al., 204

2. Damages are allowed exactly in proportion to the injury sustained by the party claiming them..... *ib.*

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4. Damages as for a frivolous appeal will not be allowed on the affirmance of judgment dissolving an injunction, which already gives ten per cent. interest, and twenty per centum damages..... *Fullton vs. Gorton's Executor*, 320

5. In a commutative contract for the delivery of a quantity of coal, for which a certain price was to be paid, in a particular manner, the whole contract to depend for its fulfilment on certain arrangements to be made by a kind of mutual agent, who failed to carry out the views of the parties: *Held*, that no damages are recoverable for the non-delivery of the coal.

Reed et al. vs. Wright, 580

DEPOSITIONS.

1. Where the deposition of a witness is not annexed or fastened to the commission and process verbal, but is enclosed with them in an envelope, sealed and directed to the clerk, it is sufficient.

Parker vs. Brashear & Barr, 69

2. Where a commission is addressed to a person by name, in another state, as a special commissioner to take depositions, his capacity and signature, and that of the witness who testifies before him, are not required to be proved..... *Harrison vs. Bowen*, 282

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| 2. The admission or confession of the husband, that he lives with another woman in a foreign country, is insufficient evidence to authorize a divorce, and to dissolve forever the bonds of matrimony..... | ib. |
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| 1. Under the old Civil Code, the party evicted will not be allowed as damages a proportion of the price of sale, equal to the quantity of land from which he is evicted ; but in assessing damages, when the sale is not cancelled, he is only to be reimbursed the value of the evicted part, according to its estimate at the time of eviction. | |
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Malançon's Heirs vs. Robeaud's Heirs, 151

2. When the court is unable from the evidence to assess the value of the evicted premises, it will remand the case for this purpose.

Melançon's Heirs vs. Robeaud's Heirs, 151

3. The right of the party evicted to be paid the value of his improvements, rests on the broad principles of equity, that no man ought to enrich himself at the expense of another.....*Pearce et al. vs. Frantum*, 414

4. In regard to the right of being reimbursed for useful improvements and expenses put on the land, by which the property has been made more valuable to the owner, the law makes little or no distinction between a possessor in good or bad faith. But the sum to be repaid can in no case exceed the increased value of the property.....*Pearce et al. vs. Frantum*, 423

5. The son may become the owner of his father's improvements on land from which he is evicted, after his purchase, and is considered in the same light, in respect to his right to be paid for valuable improvements, as his father and previous possessor. This right to be paid for useful improvements is a real right, and the party evicted may retain possession until he is remunerated..... *ib.*

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1. Parole evidence is inadmissible to show that all the formalities of a nuncupative will by authentic act, have been fulfilled. It must make full proof on its face.....*Le Blanc vs. Baras's Heirs*, 80

2. Parole evidence cannot be received, to show that certain improvements, for which the note sued on was given, had not been made as expressed in a deed or re-transfer of the property from the plaintiff to the defendant.

Cook vs. Parkarson, 129

3. So, where an act of re-transfer of property, expressly states that the sum of five hundred dollars was to be paid in consideration of the rescission of the sale, no parole evidence can be received to contradict or show that this consideration did not exist..... *ib.*

4. Parties have a right to bring in and offer their evidence in the order they choose, and it should not be rejected because that first offered does not prove enough.....*Maurin vs. Chambers & Williams*, 207

5. Where defendants, sued on their notes given for the price of land, resist payment, they have a right even against an endorsee, who received the notes before due, to offer evidence of the consideration, and to show they are in danger of eviction, when they allege they have further evidence to offer, that the endorsee had knowledge of these facts..... *ib.*

6. Case remanded to admit evidence of the consideration of the notes, and that the makers of them were in danger of eviction from the land for which the notes were given.....*Maurin vs. Chambers*, 212

7. In a petitory action for a tract of land, the sheriff's deed under which the plaintiff claims, when in due form, is admissible in evidence.

Meloy vs. Larenaudiere, 260

8. It is not a valid objection to the admissibility of a sheriff's deed in evidence, that it appears from a record accompanying it, that the land was not duly advertised before sale, and that the irregularity is not cured by the monition law. The deed must be admitted, leaving its legal effect to the jury, under the instructions of the court.....*Metoyer vs. Laurenaudiere*, 260

9. Evidence of the general opinion of the insolvency of a mortgagor in his neighborhood, to the knowledge of the mortgagees, receiving a mortgage in fraud of creditors, is a fact which may be shown to create the presumption of knowledge in the mortgagees.

Brander et al. vs. Ferriday, Bennett & Co., 296

10. Presumptive evidence ought not to be rejected, because alone, it does operate conviction..... *ib.*

11. A party cannot offer all his evidence simultaneously, and should not be controlled in the choice of that which he chooses to offer first. A party to the suit, who is interested, cannot be called as a witness..... *ib.*

12. Where the bill and protest are produced in evidence, without objection, it will be deemed sufficient proof of the drawer's signature, to authorize judgment against him, as endorser of his own bill.

Nott's Executor vs. Beard, 308

13. Parole evidence will not be received, to show that an executor continued to act as such, after the expiration of the year for which he was appointed.....*Brown's Executor vs. Williams et al.*, 344

14. Evidence should be admitted on the trial of an exception, that one of the defendants had not been served with a true and correct copy of the petition; and if it is refused, the case will be remanded, as to that defendant.

Lambeth & Thompson vs. Dosson & Lovelass, 346

15. Where the defendant denies that the note sued on was signed by him, or any one authorised to sign for him, proof of his acknowledgments or admissions, are admissible, to charge him as the maker of the note.

Montelius & Fuller vs. Cloman & Harrell, 375

16. But where the party expressly alleges that his signature has been forged, evidence of his acknowledgments or admissions that the signature was genuine, is insufficient..... *ib.*

17. The defendant denied that the note was signed by himself, or the firm of which he was a member; and two witnesses testified that he admitted the note to be genuine, and that it was a partnership transaction; there was judgment against him, on this evidence..... *ib.*

18. Acts of sale, *sous seing privé*, and not being recorded in the parish where the property is situated, are inadmissible as evidence of title to immoveable property.....*Brosnaham et al. vs. Turner*, 433

19. Where the clerk's certificate or note of the evidence, omits the protest and demand of payment, the court cannot presume that a demand of payment was made, although evidence of it exists in the record, but does not appear to have been offered.....*Legendre vs. Woodrooff*, 477

20. A claim for overseer's wages, above five hundred dollars, *not in writing*, is fully proved, by the testimony of one witness and the corroborating circumstance of the defendant's written declaration, that he would and did discharge the overseer from his employment.....*Nelson vs. Botts*, 596

EXCEPTION.

1. The exception of *quæ temporalia sunt ad agendum, sunt perpetua ad excipiendum*, exists only in favor of the defendant in possession of the property or right sought to be recovered.....*Delahousaye vs. Dumartrail*, 91

2. So, where a person has delivered possession of property or ratified a sale when a minor, he cannot afterwards bring a petitory action, to compel the purchaser to produce his title; and then by way of *exception*, ask for the rescission or nullity of the sale, when in fact he was barred by prescription from bringing a direct action of rescission or nullity..... *ib.*

EXECUTOR AND ADMINISTRATOR.

1. The mere fact of a person's dying in another parish, is not conclusive that his succession ought to be opened and administered there; or that it ought not to be administered in another parish, where, from an inventory, the deceased left property.....*Gary vs. Sandoz*, 11

2. When a succession has been opened and partially administered in a parish where the deceased left property, the former proceedings will be considered as *prima facie* evidence of the facts necessary to base the jurisdiction on an application to continue and complete the administration in the same place..... *ib.*

3. Judgment creditors of an estate in the course of administration, cannot take out execution against the administrator, without first notifying such judgment to him, that he may show he has no funds to satisfy and pay it.....*Carriere & Borduzat vs. Meyer et al.*, 126

4. Creditors having judgments against an estate, have it in their power, at any time, to compel the administrator to account and show the true state of the funds..... *ib.*

5. The 7th section of the act approved March 13, 1837, continuing the executorship, only applies to such executors as were in the legal exercise of their functions at the time of its promulgation, or those appointed afterwards.....*Brown's Executor vs. Williams et al.*, 344

EXECUTORY PROCEEDINGS.

1. Where the defendant in an injunction staying executory proceedings, joins issue and prays for judgment for the amount of his debt, he thereby changes the proceedings from the *via executiva* to the *ordinaria*, and cannot have his injunction dissolved with damages so as to proceed with his executory process of seizure on his mortgage.

M-Millin vs. Carlin, Curator, &c., 100

2. Where the notes are *not paraphed* and identified with a mortgage, yet if upon comparison of dates, and the notes having been executed according to the terms and conditions of the act of sale and mortgage, it is sufficient to support the executory proceeding.....*Pepper et al. vs. Dunlap, 163*

3. An order of seizure and sale* is so far a judgment as to authorize an appeal; but it is not a judgment in the true and legal sense of the term.

Harrod vs. Voorhies' Administratrix, 254

4. A deed or mortgage executed before a justice of the peace, will not authorize an order of seizure and sale, as that officer is wholly unauthorized to pass such acts..... *ib.*

5. The defendant complains with bad grace of credits allowed in a petition for an order of seizure. If full credits are given the seizure and sale will be allowed to proceed.....*Armor vs. Lewis, 331*

FERRIES.

1. The power of establishing ferries is now vested in the police juries of the several parishes.....*Hebert, Treasurer, &c, vs. Maillan et al., 585*

2. The power of establishing ferries by the Police jury in the several parishes, is *sufficient* for all the inhabitants, whether of a town adjacent to a stream or any others, to cross the streams which border on them; so, the town council have not this power..... *ib.*

3. The corporation of the town of Plaquemine, having no express or implied authority to establish a Ferry across a stream bordering on it, the exercise of such act is illegal; this power, under a general law, belongs exclusively to the police jury.

City Council of Plaquemine vs. Decaudine et al., 588

FRUITS AND REVENUES.

1. In a separate action to recover the fruits and revenues after eviction and the defendant pleads the price of the improvements or enhanced value of the land in compensation and reconvention, he cannot afterwards plead that these matters were decided in the suit evicting him.

Pearce et al. vs. Frantum, 414

2. Under the Civil Code of 1808, the party evicted, who was even in good faith, was bound to restore the fruits which he had reaped after the demand or institution.....*Pearce et al. vs. Frantum*, 414

3. Where a party has been in the peaceable possession of land without title, in the hope of getting a pre-emption right, he will not be liable to account for rents and profits previously to the inception of suit evicting him. *ib.*

4. The right of the party evicted to be paid the value of his improvements, rests on the broad principles of equity, that no man ought to enrich himself at the expense of another.....*Pearce et al. vs. Frantum*, 414

5. The possession of more than a year, suffices to give the possessor a right to be maintained in his possession, until a better right is shown; and that he makes the fruits his own before judicial demand.

Pearce et al. vs. Frantum, 423

6. The Spanish law provided, that whether the party evicted possessed in good or bad faith, he was not bound to deliver up the premises to the owner until he shall have been paid for the expenses incurred on account of them..... *ib.*

7. So, the possessor in bad faith, may claim in offset of rents, or fruits and revenues which he is condemned to pay, the enhanced value which his improvements added to the property..... *ib.*

8. The son may become the owner of his father's improvements, and after eviction, be entitled to pay for them as an offset to the fruits and revenues. The right to be paid for useful improvements is a real right, and the party evicted may retain possession until he is remunerated..... *ib.*

GARNISHEE.

1. Where judgment is entered against the defendant "to be satisfied to the amount of six hundred and forty-five dollars out of the funds attached in the hands of the garnishee," it is considered a final judgment as to the garnishee, on which execution may issue against him. *Kirkman et al vs. Hills*. 523

2. A garnishee may be arrested and held to bail under a judgment against him and the defendant; and after a return of *fi. fa.* and *capias*, "not found, &c.," the bail may still surrender him at any time before a judgment fixing his responsibility as bail..... *ib.*

3. Where the answers of a garnishee are not explicit or responsive to the interrogatories, on his failure to make proper answers, the interrogatories will be taken for confessed, and the garnishee held liable for the defendant's debt.....*Hart & Merritt vs. Dahlgreen & Co.*, 559

GUARANTY.

1. Where guarantors receive no notice of the acceptance of the guaranty, or of the various advances made on bills drawn on it, until after their dishonor, they are discharged by the *laches* of the holders.

Bank of Illinois vs. Sloo & Byrne et al., 539

2. It is the duty of creditors or holders of bills drawn under guaranty, within a reasonable time after the advances are actually made, to give notice thereof to the guarantors, informing them that reliance is placed on their guaranty to insure repayment..... *ib.*

3. A party giving a letter of guaranty has a right to know whether it is accepted, and whether the person to whom it is addressed means to give credit or make advances on it or not..... *ib.*

4. Acceptors of bills of exchange drawn on their letter of credit, addressed to the payees or purchasers of the bills, are absolute acceptors and not guarantors..... *ib.*

HUSBAND AND WIFE.

1. The paraphernal property of married women is not bound for the debts contracted by the husband while at the head of the community: Neither are the fruits liable when the wife administers her own property.

Lambert vs. Franchebois et al., 1

2. Sale by the husband to the wife, when made for the replacing of her dotal and paraphernal property or effects, *is valid* in law, particularly when no fraud and collusion is alleged..... *ib.*

3. So, a sale from the husband to the wife, for replacing her dotal and paraphernal effects, should not be attacked, unless on the ground of fraud and collusion..... *ib.*

INJUNCTION.

1. Where an injunction is perpetuated for a part of the sum enjoined, the party obtaining it will not be liable to damages and costs on its dissolution for the remainder..... *Wells vs. Gordon*, 219

2. Where a party is condemned as surety on a bail bond *without notice* of judgment *ni si*, or a copy served on him, his remedy is by appeal and not injunction..... *Cook vs. State of Louisiana*, 288

3. If a judgment is so illegal as to be a nullity, an action of nullity and not an injunction should be resorted to..... *ib.*

4. An injunction to stay an order of seizure and sale of a tract of land, on the ground that there is a deficiency in the quantity sold, when it is a sale *per aversionem*, will be dissolved with damages, as having wrongfully issued..... *Braseale & Sewell vs. Bordelon, Administrator et al.*, 333

INSOLVENCY.

PAGE

1. Where attacking creditors commence their revocatory actions about the same time, and use proper diligence, one shall not have exclusive privilege on the property fraudulently conveyed and recovered, simply because his suit was first commenced. The property must be divided *pro rata* among them.....*Walton & Son vs. Bemiss et al.*, 140

2. Persons who are not creditors of an insolvent debtor, may purchase and receive transfers of his property, after he is in insolvent circumstances, and it cannot be complained of by his creditors, when they appear to be purchasers for a valuable consideration and in good faith.

Dwight & Hartman vs. Bemiss et al., 145

3. But if an insolvent debtor use the proceeds of sales of his property in such a manner as to give a preference to one creditor over another, the law will interfere and correct it..... *ib.*

4. The act of 1817, relative to voluntary surrenders, is highly penal, and must be strictly construed as regards debtors charged with fraud.

Campbell vs. His Creditors, 348.

5. So, where the verdict of the jury in a case of fraud, finds the facts charged as fraudulent, *to be true*, but negatives any fraudulent intent on the part of the ceding debtor, it is substantially a verdict of acquittal, and judgment must be so pronounced..... *ib.*

6. Every act done by a debtor, with the intent of depriving his creditor of the eventual right he has on the property of the former, is illegal, and as respects such creditors, ought to be avoided.....*Hempkin vs. Bowmar et al.*, 363

7. In a revocatory action to set aside a mortgage made in fraud of creditors, it is not necessary to prove that the mortgagee was aware of the debtor's insolvency; proof of fraud against the mortgagee, as giving a preference, and the injury resulting to other creditors, is sufficient..... *ib.*

8. Where a debtor is perhaps in insolvent circumstances, but when there is no proof that the creditor had any knowledge of it, he may give a valid mortgage in favor of such creditor.

Brander et al. vs. Bowmar & Abercrombie, 370

9. So, a prior mortgage to secure endorsements not paid, will have a preference over a judgment creditor, whose judgment is not recorded, when there is no proof of knowledge of the insolvency of the debtor, at the time, by the mortgagee..... *ib.*

INTERDICTION.

1. Suits for the interdiction of idiots or insane persons, must be brought in the *Probate Court*, and all the proceedings had there. The *Parish Court*, although it be the same judge, is without jurisdiction *ratione materie* to try such cases.....*Segur vs. Pellerin*, 63

2. In a suit for interdiction, service of petition and citation must be made on the person sought to be interdicted, in the same manner as in other cases. It is not sufficient for the attorney appointed to defend him, to accept service.....*Segur Pellerin*, 63
3. A judgment of interdiction rendered on *ex parte* testimony, is erroneous, and will be reversed on appeal..... *ib.*
4. The law requires that the person intended to be interdicted, should be notified of the suit; and have an opportunity to employ his own counsel, before any is appointed by the judge..... *ib.*

INTERVENTION.

1. The article 391 of the Code of Practice, provides that one may intervene either before or after issue joined, provided the intervention do not retard the principal suit; yet time must be allowed to cite the party against whom it is directed, and the same delays to answer or respond to interrogatories given, as in ordinary suits.

Ardry's Wife vs. Ardry her Husband: Kain & Co. et al., Intervenors, 264

2. So, where the plaintiff has treated the intervening parties as properly in court, he must allow them the necessary delays to bring in the answers of all the necessary parties..... *ib.*

3. An intervenor may produce evidence, to prove that the property attached had been transferred to third persons, before coming into his possession as owner, in order to show that the defendants had parted with their interest at the time of the attachment.

Shields et al. vs. Perry, McClure et al., 463

INTEREST.

1. In a contract between the vendor and vendee, where the latter has had the use and enjoyment of the property, he cannot demand interest on the price he has paid, in case of eviction under the mortgage retained.

Miles vs. His Creditors, 35

2. So, in a contract between two creditors of the proceeds of mortgaged property in the hands of a syndic, to be allowed their respective claims, the vendee who had paid part of the price, was in possession and had the use, but gave up the property, cannot claim interest, which is satisfied by the use and enjoyment of the property..... *ib.*

3. Interest will be allowed on an open account from another state, where a statute of that state is in evidence, authorizing it and fixing the rate.

Leserne & Edmondson vs. Cook, 58

4. Where there is no evidence of the rate of interest in the state where the obligation sued on was made, it must be assumed as the same rate of legal interest in this state..... *Patterson vs. Garrison*, 557

JUDGMENT.

PAGE

1. A judgment of the Probate Court, unappealed from, appointing the plaintiff agent, with power to collect the debts of a partnership, is full authority for him to sue and recover all accounts and debts due the firm.
Brent, Agent, &c. vs. Cheevers, 23
2. The authority of a judgment of court, cannot be inquired into collaterally..... *ib.*
3. A defendant cannot avail himself of an error in the name of his co-defendant, in a joint judgment against them..... *Parker vs. Brashear & Barr,* 69
4. A judgment against partners in a sugar estate, must in its form be joint, and against each one, separately, for his proportion.
Parker vs. Brashear & Barr, 69
5. An order or judgment of the Probate Court, erasing the legal and special mortgage of a minor, under the act of 1830, and giving a special mortgage on part only of the tutor's property, in lieu of the first, cannot be attacked collaterally, when third persons have purchased property released by these proceedings; it must have its effect, until reversed or annulled in a direct proceeding or action..... *Le Blanc vs. His Creditors,* 120
6. So, in the suit of a minor, on arriving at the age of majority, to annul an order or proceedings of the Probate Court, it cannot affect the right of third persons who purchased under the faith of these proceedings, sanctioned by the Court of Probates..... *ib.*
7. Judgment creditors of an estate in the course of administration, cannot take out execution against the administrator, without first notifying such judgment to him, that he may show he has no funds to satisfy and pay it.
Carriere & Borduzat vs. Meyer et al., 126
8. Before the plaintiffs can issue a *fieri facias*, they must first notify their judgment to the defendant..... *Guidry vs. Guidry's Heirs,* 157
9. So, where a judgment of partition, decreeing a balance due by an heir to his co-heirs, has not been regularly notified to him, and he was not made a party to it, he will be entitled to a perpetual injunction against such judgment..... *ib.*
10. An order of seizure and sale is so far a judgment as to authorize an appeal; but it is not a judgment in the true and legal sense of the term.
Harrod vs. Voorhies' Administratrix, 254
11. Judgment by default is premature, taken on the first day of the term. The defendant is allowed the first day on which to file his answer.
Bryan's Administrator vs. Spruell, 313
12. In all cases of judgment by default made final, the plaintiff must prove his demand; and not having proved the defendant's mark to the note sued on, the judgment for the plaintiff was reversed, and the case remanded. *ib.*

13. Judgment affirmed as for a frivolous appeal, but it already bearing ten per cent. interest only five per cent. damages was allowed.

Windle vs. Flint, 318

14. Judgment entered by consent of both parties, reversing the judgment appealed from, and remanding the case for a new trial.

Sexton et al. vs. Brock, 347

15. The decree or judgment of a foreign court, the jurisdiction of which not having been questioned, will be considered conclusive on the matters adjudged by it.....

Brosnaham et al. vs. Turner, 433

16. Where there is a judgment, execution and sale of property shown, the court will not inquire into the validity of the judgment; and when in the investigation of a title a judgment is produced, to which one of the litigants is a party, it cannot be inquired into collaterally.

Brosnaham et al. vs. Turner, 442

17. Where a judgment is set up as the basis of the defendant's title, in a petitory action against him, its validity cannot be examined, or inquired into collaterally. Never having been reversed or annulled, it must have its full force and effect.....

ib.

18. Where a judgment, writ of execution and sheriff's sale are shown in support of a title, it necessarily creates a strong presumption in favor of the title, and is *prima facie* evidence that the formalities of law have been complied with.....

ib.

19. Where it is evident justice requires it, even judgment of non-suit will not be given, but the case will be remanded for new proceedings.

Legendre vs. Woodrooff, 477

20. Where a judgment is given against the defendant "to be satisfied to the amount of six hundred and forty-five dollars out of funds attached in the hands of the garnishee," execution may issue against the latter.

Kirkman et al. vs. Hills, 523

21. Judgment may be rendered against both the defendant and garnishee at the same time and in the same judgment.....

ib.

22. Where a judgment has been rendered against two commercial partners on the confession of one, which is on a writ of error, reversed and vacated as to the other, he is not thereby released from the debt by a merger of the debt in the judgment.

State Bank of Illinois vs. Sloo & Byrne et al., 544.

23. If judgment be obtained against one of several debtors *in solido*, the others cannot resist the demand of their creditor on the ground that the debt is merged in the judgment against their co-debtor.....

ib.

24. Judgment bearing ten per cent. interest, affirmed with 5 per cent. damages as a delay case.....

Gollain vs. Jamet, 565

JURISDICTION.

1. Where the husband seeks to recover certain property as his part of the community in his own right from the heirs of his deceased wife who claim it under her last will, although he may give to his suit the form of an action of partition, yet it involves title and the Probate Court is without jurisdiction.....*Breau vs. Landry et al.*, 88
2. A party cannot amend his pleadings and add a nominal sum to increase the demand above three hundred dollars, so as to give appellate jurisdiction to this court. Such a course will be viewed as an attempt, to evade the constitutional provision on this subject, and the case will be dismissed for want of jurisdiction....*Red River Rail Road Co. vs. Williams*, 182
3. This court will not suffer imaginary claims to be tacked to real ones, for the purpose of giving jurisdiction in violation of the constitution..... *ib.*
4. A suit on the bond of a curatrix against her and her sureties, to render her personally liable, and recover against them individually, must be instituted in the courts of general or ordinary jurisdiction.
Brown vs. Gunning's Curatrix et al., 238
5. The Court of Probates is without jurisdiction *ratione materie* in a contest between two co-proprietors of property seeking a partition, and where one is proceeding as plaintiff *à la folle enchere*, to have certain property purchased by the other, at the probate sale of the joint estate, re-sold at his risk and costs.....*Bray's Executrix vs. Bray*, 352
6. A party may sue for unliquidated damages for the non-compliance with the contract of sale, and it is clear, in such a case the Court of Probates would be without jurisdiction. It is the same if the party sues to compel a resale at the risk of the purchaser, although the contract of sale arose under a proceeding nominally in the Probate Court..... *ib.*

JURY.

1. The defendant to obtain a trial by jury when sued on his note or monied obligation, must swear to all the allegations in his plea or answer.
Amado vs. Breda, 257
2. It is essential to a special verdict that it finds the facts, but leaves the legal consequences to be drawn from such facts to the court.
Campbell vs. His Creditors, 348
3. But where the jury find certain facts true and draw their own conclusions from them in favor of the defendant, it is a general verdict of acquittal. *ib.*

LAND TITLES AND LAWS.

1. Titles to land must be located according to their calls; and where part of the place called for by the title is abandoned and another person

locates it, and acquires a better title; the party abandoning cannot make his location in another place to the prejudice of others. He must suffer the loss. *Wilcoxon vs. Rogers et ux.*, 6

2. Where two confirmations of land titles are of equal dignity and one is regularly located and accompanied by possession, and no steps taken by the other, the first will hold the land by the prescription of ten years..... *ib.*

3. A corporeal possession in the beginning, a civil one will be sufficient to complete the possession already begun, and to support the prescription of ten years..... *ib.*

4. Where the plaintiff holds by two titles and the premises are sold by the sheriff under execution against him, and he receives the balance after satisfying the judgment, he cannot set up a claim to the same property under the other title, not recited in the sheriff's deed, although the sheriff describes the sale to be of the youngest of the two titles. *Collins vs. Moore & Prescott*, 75

5. Where the purchaser of public lands offers to comply with the conditions of the law, and is prevented by the government not performing the obligations imposed on it, he is not to suffer or lose his rights on this account. *Marsh & Miller vs. Gonsoulin* 84

6. So, where the government refused to receive the money from a pre-emptor, who had proved up his settlement right under the act of congress passed the 29th May, 1830, because the land was not surveyed and a plat returned to the land office, and in the meantime the front proprietors entered and paid the government for the same land under the act of 15th June, 1832, giving the owner of land fronting on water courses, a preference in becoming the purchaser of any vacant land back of his own tract: *Held*, that the pre-emptor having complied with all the conditions of the law on his part, is entitled to hold the land..... *ib.*

7. Where the evidence shows that the ancestor of the plaintiffs had sold and transferred his interest in a settlement right or tract of land, five years before its confirmation, although confirmed in his name, it enures to the benefit of the transferee and the heirs of the original grantee cannot recover it..... *O'Brien's Heirs vs. Smith*, 94

8. The act of congress passed 29th May, 1830, gives every settler or occupant of the public land a pre-emption right to purchase a quarter section of land at the minimum price, but forbids all assignments and transfers of pre-emption rights prior to issuing patents therefor, under the penalty of nullity..... *Strong vs. Rachal et al.*, 232

9. The act of 1832, which authorizes persons who have purchased their pre-emption rights to transfer their certificates and receipts of the land officers, and the issuing of patents to the assignees, does not repeal that part of the act of May 29, 1830, which declares all transfers of the right of pre-emption, null and void..... *ib.*

10. So, the sale and mortgage of a pre-emption right to a quarter section of land, before a receipt and certificate is obtained from the land officers, under the act of congress of the 26th May, 1830, is null and void. *ib.*
11. The penalty for failing to pay the different instalments to the United States for the purchase and entry of lands under the credit system, was absolute forfeiture, and the reversion of the land to the government.
Kirkby's Heirs vs. Fogleman, 277
12. According to the act of congress passed 2d March, 1821, after the change from the *credit* to the *cash* system, which extended the credit on lands already purchased but not paid for, or allowed a discount to those preferring to pay in cash, the penalty for failing to comply with these requisitions was absolute forfeiture and reversion to the government..... *ib.*
13. The entry and purchase of lands under the act of the 4th July, 1827, previously forfeited, divested the United States of all title which had been acquired by the previous forfeitures and reversions..... *ib.*
14. The registers and receivers being authorized by the laws of congress, to carry into effect the various laws allowing pre-emption rights, and also to make sale of the public lands, this court is bound to give effect to the titles they confer, unless the adverse party produces a better..... *ib.*
15. So, where the register and receiver's certificate gave a pre-emption right to the plaintiff's ancestor *as assignee*, on paying the price to government, and there is no evidence of the assignment but this certificate: *Held*, that they must recover the land, as against the defendant who claims under a prior entry, but his title was forfeited to the United States..... *ib.*

SEE SALE—VENDOR AND VENDEE.

LESION.

1. In an action of lesion beyond moiety, it is necessary to put the defendant *in mora*, more than by the institution of suit; the sole object of which, is to compel the vendee to restore the property to the vendor.
Copley vs. Flint & Cox, 380
2. A sale and purchase of a tract of land, for the purpose of redemption by the original owner, and the extinguishment of a doubtful claim, growing out of a forced alienation for taxes, is not such a sale as would give rise to an action of rescission for lesion..... *ib.*
3. The intrinsic value of the land at the time of sale, and of the plaintiff's pretensions, and the nature of his title, should be examined and inquired into, as matters put expressly at issue in an action for a rescission of a sale on account of lesion..... *ib.*
4. But in a sale of a precarious claim to land without warranty, it is a proper subject of inquiry, what were the vendor's pretensions worth? rather than what was the intrinsic value of the land in an action of lesion?..... *ib.*

5. Under the plea of the general issue, in an action for the rescission of a sale for lesion beyond moiety, evidence is admissible, to show what the plaintiff's pretensions, title or claim, was really worth, without being confined to the mere intrinsic value of the land.....*Copley vs. Flint & Cox*, 380

LETTING AND HIRING.

1. The contract of letting and hiring, must be construed and modified by the use and general understanding of the parties in the country where it is made; as a slave hired for an ostler in a country inn, may be used to drive a waggon to haul provisions and fuel for the tavern.....*Taylor vs. Andrus*, 15
2. So, where a slave was hired as an ostler in a small town, and he was employed to drive a waggon and haul wood to the tavern, and was accidentally killed: *Held*, that the owner or hirer cannot recover his value, as having been improperly used or employed..... *ib.*

MONITION.

1. A monition has no other effect than to protect the purchaser against the claim of the defendant in execution; or that of any person resulting from any irregularity in the judgment or other proceedings in making the sale.
Cordeville & Lacroix vs. Hosmer, 590

MORTGAGE AND PRIVILEGE.

1. An order of the Probate Court, erasing the legal and special mortgage of a minor, under the act of 1830, and giving a special mortgage *on part only*, of the property of the tutor in lieu of the first, cannot be attacked collaterally, when third persons have purchased property released by these proceedings; it must have its effect until reversed or annulled in a direct proceeding or action.....*Le Blanc vs. His Creditors*, 120
2. A mortgage is in its nature indivisible, and prevails over every part of the immovable subjected to it; and the mortgaged premises must be sold to satisfy the whole debt it was taken to secure, and not a part thereof.
Pepper et al. vs. Dunlap, 163
3. A seizing creditor, who only sues for such instalments of a debt secured by privilege or mortgage as are due, the property so mortgaged is to be sold for the *whole of the debt*, on such terms of credit as are granted by the original contract; although such creditor does not show that the notes of the subsequent instalments belong to him, or that he is the holder of all the notes included in the mortgage..... *ib.*
4. Where the demand exceeds five hundred dollars, for work and labor done, and materials furnished in repairing houses, there must be a registry of some act or written agreement, in order to give a privilege on the property or its proceeds, in the hands of the administrator.
Taylor et al. vs. Crain's Administrator, 290

5. Two requisites are indispensable, as between the employer and undertaker, for the creation of the privilege, which are, that the agreement must be in writing, and registered in the office of the register of mortgages.

Taylor et al. vs. Crain's Administrator, 290

6. The price of property subject to a privilege, sold before the decease of the owner, when collected by his administrator, is free of the privilege, and must be distributed among the ordinary creditors..... *ib.*

7. Privileged claims for work and materials on a house, are prescribed by the lapse of six months, if they are under five hundred dollars..... *ib.*

8. A mortgage may be given to secure endorsements made and to be made, and which are not due at the time of executing it.

Brander et al. vs. Boumar & Abercrombie, 370

9. So, a prior mortgage to secure endorsements not paid, will have a preference over a judgment creditor whose judgment is not recorded, when there is no proof of knowledge of the insolvency of the debtor at the time by the mortgagee..... *ib.*

10. An assumed note by a vendee, bearing the first mortgage, must be paid in full, before those he gives can come in under his mortgage.

McMahan vs. Grant & Turnell, 479

11. The vendor of lots, when opposed by the builder's claim and privilege on buildings erected, is entitled to have the ground appraised separately from the houses, and to be paid from the proceeds of the ground, separately from that of the buildings..... *Cordeville & Lacroix vs. Hosmer*, 590

12. The appraisalment must be made by persons chosen by the vendor and builder; neither of whom can be concluded by an appraisalment made without his knowledge..... *ib.*

NEW-ORLEANS.

1. The acts of 1832, for "opening and improving streets in New-Orleans," does not authorize the commissioners to assess a tax on the neighboring proprietors of grounds, for the purpose of clearing, grading, draining and improving streets in their vicinity, already opened and dedicated to public use, when no portion of the disbursements is for lands taken, or to be taken for new streets..... *Municipality No. 2 vs. McDonough*, 533

2. The act of 1832, is enacted for the exclusive and special object of authorizing the city council to take lands or lots, to remove any buildings or improvements necessary for the purpose of opening, extending, enlarging, &c., or otherwise improving any street or public place, on due compensation being made to the parties and persons to whom the loss and damage occasioned thereby exceeds the advantage and benefit thereof..... *ib.*

3. An opposition to the proceedings and report of commissioners, under the act of 1832, for opening streets, &c., which is in the nature of a per-

empty exception, destroying the right and power assumed by the corporation, alleging the proceedings to be null, *ab initio*, may be put in at any time before judgment homologating the report.

Municipality No. 2 vs. M'Donough, 533

NEW TRIAL.

1. In an application for a new trial, on the ground of newly discovered evidence, in the absence of the party, the attorney who conducts the suit is competent to make the necessary affidavit, when the facts are within his knowledge..... *Williams vs. Brashear*, 77

2. So, in an action against the drawer of a bill, where the attorney swears that since the trial he has discovered a certain person who will prove that the defendant had sufficient funds in the hands of the acceptors to pay the bill, it is good grounds for a new trial..... *ib.*

NOVATION.

1. To create a novation by the substitution of a new debtor, the latter must oblige himself towards the creditor, in lieu of the original debtor, and it must appear that the creditor expressly discharged the first debtor.

Bonnemer vs. Negrete, 474

2. The giving an order on a particular fund for the amount of a note or debt, when the original debtor is not discharged, does not operate a novation of the debt..... *ib.*

PARTITION.

1. Where an heir was not made a party to the proceedings, in a settlement and partition of the successions of his ancestors, he is not bound or liable under the judgment rendered, for any of the shares or balances that may be decreed against him..... *Guidry vs. Guidry's Heirs*, 157

2. To render a partition valid and binding, all the parties to it must be cited or notified; and all the formalities prescribed by law must be pursued, to authorize a judgment of homologation, and make it binding..... *ib.*

3. So, where a judgment of partition decreeing a balance due by an heir to his co-heirs, has not been regularly notified to him, and he was not made a party to the proceedings had in making the partition, he will be entitled to a perpetual injunction against such judgment..... *ib.*

4. Co-proprietors of a succession of full age, and capable of contracting, may consent to a sale at public auction; and although the proceeds may be applied to the payment of debts, yet if the creditors do not interfere, such a sale may be considered in the nature of a partition, without the aid of a court..... *Bray's Executrix vs. Bray*, 359

PARTNERSHIP.

- | | PAGE |
|--|---|
| 1. The surviving partner cannot sue for a partnership debt, when he has not joined the representatives of the deceased partner; or has shown no authority as liquidator of the partnership affairs..... | <i>Connelly vs. Cheevers</i> , 30 |
| 2. In an ordinary partnership the act of one partner executing a mortgage and note in the name of the partnership, for certain slaves which had been previously purchased, is valid and binding as tending to benefit the firm | <i>Petrovic vs. Hyde et al.</i> , 223 |
| 3. Where certain slaves belonging to a firm are sold and transferred by two of the partners to the third one, who receives them and stipulates to pay the price, it is a ratification of the previous mortgage and sale of the slaves to the firm by him, and he is bound..... | <i>ib.</i> |
| 4. Where a partner buys out the property of the partnership, and stipulates with his co-partners to pay a certain mortgage debt, the creditor has a right to proceed directly against him by order of seizure and sale, as the principal debtor, who is personally liable and not entitled to the privilege of a third possessor, namely, the right of relinquishment..... | <i>ib.</i> |
| 5. Where a note was given by one partner for an ordinary partnership debt in the name of the firm, and it is shown the defendant purchased out his co-partners, and agreed to pay all the plantation debts, he cannot resist payment, on the ground that one partner had no authority to subscribe the note sued on in the name of the firm..... | <i>Lott & Ives vs. Parham</i> , 245 |

PAYMENT.

1. Where a creditor gives a receipt at the foot of an account, in which he has a privilege for personal property sold, stating he has "received payment by note payable at four months," it is a payment of the account and extinguishes the privilege.....*Walton and Son vs. Bemiss et al.*, 140
2. So, where a creditor receives a note from his debtor, to collect and pay himself, he is bound to use due and proper diligence to collect it, or he will be charged with the amount.....*Dwight & Hartman vs. Bemiss et al.*, 145
3. Where it is expressed in the act of sale, that notes were "received in payment," this expression will be taken in reference to other parts of the act, where it is shown a mortgage was retained, &c. In such cases it is not such a payment as will prevent a rescission of the sale in case of the non-payment of the notes.....*Borgeat vs. Smith's Syndic*, 467

PRACTICE.

1. It is necessary that the parish judge should designate in all his proceedings, the capacity in which he acts; and that the proceedings of the Probate Court be conducted and kept distinct from those of the Parish Court.....*Segur vs. Pellerin*, 63

2. Where the record contains no motion for a continuance, or reasons offered for one, the affidavit of the party that he was absent and his counsel not in attendance at the trial, cannot be received in this court, to open the judgment and remand the case for a new trial on the ground that great injustice has been done.....*Peuch, Bein & Co. vs. Palfrey, Syndic, &c.*, 97

3. A party cannot be heard in the Supreme Court, on his affidavit asking to remand the case for a new trial, on the ground that he was called for trial in the Inferior Court.....*Compton vs. Palfrey, Syndic, &c.*, 99

4. Where the plaintiff fails to make out his case clearly, he must be nonsuited: So, where it did not appear that the person suing as agent, was really such, or that the debt actually existed, judgment of non-suit was entered.....*Mouton, Agent, &c. vs. Thibodeaux*, 131

5. On remanding a cause for trial between the warrantors, the plaintiff, in the demand in warranty, may amend his answer so as to claim damages from the warrantor. The amended answer does not change the substance of his demand or the legal recourse against his warrantors.

Melançon's Heirs vs. Robechaud's Heirs, 151

6. Parties have a right to bring in and offer their evidence in the order they choose, and it should not be rejected because that first offered does not prove enough.....*Maurin vs. Chambers and Williams*, 207

7. Where the judge in his statement of facts certifies "that the protest was proved to have been regularly made, and the notices given accordingly," it was held insufficient proof of notice to the endorsers; and the court not being able to see whether the notices were properly given, or to examine the case on its merits, the appeal was dismissed.

Union Bank vs. Williams et al., 236

8. Where a cause has been the second time submitted to a jury, and the verdict does not appear manifestly erroneous, it will not be disturbed.

Hood vs. M'Corkle, 240

9. Where the answer, judgment and part of the parole evidence appears to have been lost, a *certiorari* would be useless, as the record in such case cannot be perfected; and when it appears that justice does not require it, the cause will not be remanded for a new trial.....*Boler vs. Day*, 251

10. The letter of the law may be disregarded with the *honest intention* of seeking its spirit when it leads to an absurd conclusion, and the judge is bound to recede from the letter until he arrives at a reasonable conclusion.

*Ardry's wife vs. Ardry, her Husband: Kain & Co. et al., Intervenor*s, 264

11. Where the certificate of the notary, at the foot of an act of mortgage, states it is a true copy, it is sufficient when the seal is also affixed; although the notary does not say, "it is given under his hand and seal."

Armor vs. Lewis, 331

12. In all cases of judgment by default made final, the plaintiff must prove his demand, and not having produced evidence of the defendant's mark or signature to the note sued on, judgment for the plaintiff was reversed.

Bryan's Administrator vs. Spruell, 313

13. A suit for the rescission of a sale for lesion beyond moiety, and on account of the non-payment of the price, cannot be maintained for both demands; as they should not be cumulated in the same action.

Copley vs. Flint & Cox, 330

14. Other systems of law may be referred to for light when the great and leading principles of equity are in question, and our own laws are silent; but the merely arbitrary rules of a foreign system should not be invoked.....*Miller vs. Holstein*, 369

15. An opposition to the report of commissioners under the act of 1832, for opening streets, &c., which is in the nature of a peremptory exception, destroying the right and power assumed by the corporation, alleging the proceedings to be null *ab initio*, may be put in at any time before judgment homologating the report.....*Municipality Number Two vs. McDonough*, 533

16. The want of docketing a judgment does not prevent its being executed.

Fink vs. Lallande et al., 547

17. A scroll with the letters (*L. S.*) written in it, will be a sufficient seal to a writ of *feri facias*, when it does not appear the court had any other. *ib.*

18. Before the adoption of the constitution, a compliance with either the English or French text of the law was sufficient..... *ib.*

19. Where manifest justice requires it, the case will be remanded for a new trial.....*Lambeth & Thompson vs. Riarde et al.*, 572

PREScription.

1. Where two confirmations of claims to land are of equal dignity, and one of them is regularly located and accompanied by possession, and no steps taken by the other; the first will hold the land by the prescription of ten years.....*Wilcoxon vs. Rogers et ux.*, 6

2. If there is not a possession of five years with a title, legal and sufficient to transfer the property in a slave, the defendant cannot invoke prescription.....*Cuny vs. Robert et al.*, 175

3. The granting an order of seizure and sale, does not prevent the prescription of five or ten years, on the note or debt on which the order is founded.....*Harrod vs. Voorhies's Administratrix*, 254

4. Privileged claims for work and materials furnished on a house are prescribed by the lapse of six months, if they are under five hundred dollars.

Taylor et al. vs. Crain's Administrator, 290

PRINCIPAL AND AGENT.

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| 1. A judgment of the Probate Court unappealed from, appointing the plaintiff agent, with power to collect the debts of a partnership, is full authority for him to sue and recover all accounts and debts due to the firm.
<i>Brent, Agent, &c. vs. Cheevers.</i> | 23 |
| 2. An agent may possess for his principal, and his possession is sufficient to maintain the possessory action..... <i>Arden vs. Soileau,</i> | 28 |
| 3. An authority to an agent or attorney at law to collect a debt, does not authorize him to novate it, or enter into a compromise.... <i>Dupre vs. Splane,</i> | 51 |
| 4. But where an agent, in the honest exercise of his judgment, makes an unauthorized settlement by receiving part of a debt in cash, and the note of another person for the balance; and apprizes his principal, the latter must disapprove of it in a reasonable time, or his silence will be considered an approval..... | ib. |
| 5. The principal must make his election. He cannot hold his agent liable, and at the same time avail himself of his acts, if they should be advantageous..... | ib. |
| 6. So, where the agent had a note to collect, and not being able to get all in money, and fearing the insolvency of the debtor, took a note on another person for the balance which was not paid, but of which he advised his principal, who made no objection at the time: <i>Held</i> , that the agent was not bound for the loss..... | ib. |
| 7. A promise to pay certain drafts by the defendant, who avers that he drew them as agent, will bind him personally, and authorize the drawee, who has paid the drafts, to recover the amount from him. The case is stronger when the principal disavows the acts of his alleged agent.
<i>Linton's Heirs vs. Walsh,</i> | 113 |
| 8. Where A. authorized B. against whom he had a judgment, to deliver his draft for its amount to the clerk of the court, and the latter gave his draft payable to the order of the clerk, who appropriated it to his own use: <i>Held</i> , that he should have made it payable to the order of A., for whom it was given, and not to have put it in the power of the clerk to use it, and that having done so, he was still liable to pay the amount of the judgment to A..... <i>Wells vs. Gordon,</i> | 219 |
| 9. When an agent or attorney undertakes to collect a debt in a distant place, and makes known to his principal the mode of conveyance by which the note or evidence of the debt will be sent, who does not disapprove of it, he will not be responsible for an accident that may happen and prevent its safe arrival, without his fault.
<i>Delavigne, Syndic vs. City Bank of New-Orleans,</i> | 471 |
| 10 A bank taking a note for collection, becomes the mandatory or agent of the holder or depositor <i>only</i> ; there is no privity between it, and any of | |

- the other endorsers or parties to the note. Its responsibility is only to those who employ it..... *M'Culloch vs. Commercial Bank*, 566
11. So, where a note is deposited for collection, and the notary of the bank fails to give notice of protest to the first endorser, who is thereby discharged; the second endorser who takes up the note, has no recourse against the bank..... *ib.*

PRINCIPAL AND SURETY.

1. The surety cannot require the creditor to sue the principal debtor before resorting to him for payment. His remedy is to pay the debt, and exercise the rights of the creditor against the debtor, to which he is subrogated by the payment; or proceed under article 2026 of the Louisiana Code.
Boutte, f. m. c. vs. Martin et al. 133
2. A verbal agreement to wait until the debtor can go to a certain place to procure money, with which to pay the debt, is not such a prolongation of time as will discharge the surety..... *ib.*
3. The plaintiff cannot have a case in this court continued for a *certiorari* as to the principal debtor, and proceed to final judgment against the sureties, who are his co-defendants.
Griffing's Administratrix vs. Caldwell et al., 294
4. Sureties have an interest that judgment be first rendered against the principal debtor, or at least simultaneously with them..... *ib.*

POSSESSION.

1. A corporeal possession in the beginning, a civil one will be sufficient to complete the possession already begun and support the prescription of ten years..... *Wilcoxon vs. Rogers et ux.*, 6

REDHIBITION.

1. Where a slave is expressly excepted, in the act of sale from the warranty, of being *sound in body*, it will be considered a solemn declaration that he is unsound, and the purchaser takes him absolutely at his risk.
Nelson vs. Lillard, 336
2. Where the evidence does not show that the slave was affected with a redhibitory disease, at the time of sale, it is insufficient to rescind the sale, although it is proved he was sick shortly after the sale..... *ib.*

RES JUDICATA.

1. In an action to recover the rents and profits in a separate suit, after eviction, and the defendant pleads, in compensation and reconvention of the plaintiff's demand, the enhanced value of the land, he cannot afterwards avail himself of the plea of *res judicata*..... *Pearce et al. vs. Frantum*, 414

RIGHT OF PASSAGE.

PAGE

1. It is only for plantations enclosed and surrounded by other lands, that the right of passage or of way over the lands of others, is established by law.....*Martin et al. vs. Patin et al.*, 55

2. The right of passage over the land of others, is not given as a matter of convenience but of necessity : So, where there is room to go round the lands of a neighbor, the right of passage will not be allowed to go through and compel the latter to leave a lane..... *ib*

SALE.

1. A sale by the husband to the wife, when made to replace her dotal and paraphernal effects, is valid in law ; and particularly when no fraud and collusion is alleged. It should not be attacked, unless on the ground of fraud and collusion.....*Lambert vs. Franchebois et al.*, 1

2. The purchaser at sheriff's sale is personally bound for the surplus of the adjudication, still secured by special mortgage on the property sold, and holds the surplus subject to the claim of the inferior mortgage creditors; and if he fails to pay, when it is demanded of him, he will be liable to be proceeded against as a third possessor.....*Pepper et al. vs. Dunlap*, 163

3. So, where a seizing creditor only sues for such instalments of a debt, secured by privilege or special mortgage, as are due the property so mortgaged, is to be sold for *the whole of the debt*, on such terms of credit as correspond with the remaining notes and instalments not due, although such creditor is not the holder of them..... *ib.*

4. The sale of a body of land, as a section or fractional section, described as containing a certain number of acres, is not a sale *per aversionem*, but of a limited body ; and if there is a deficiency in the measure, or it comes short of the quantity sold, it must give way to the diminution of price proportionate to the quantity it is short, if it exceeds one-twentieth part.

Phelps vs. Wilson, 185

5. A probate sale of the tract of land on which the deceased resided, as containing two hundred and twenty arpents, more or less, and described from boundary to boundary, is a sale *per aversionem*, and the purchaser cannot obtain a diminution of the price, for any deficiency there may be in the measure.....*Brasale & Sewell vs. Bordelon, Administrator et al.*, 333

6. Co-proprietors of full age and capable of contracting, may consent to a sale at public auction ; and although the proceeds may be applied to the payment of debts, yet, if the creditors do not interfere, such sale may be considered in the nature of a partition, without the aid of a court.

Bray's Executrix vs. Bray, 352

7. A party may sue for unliquidated damages, for the non-compliance with the contract of sale; and it is clear, in such a case, the court of probates would be without jurisdiction. It is the same if the party sues to compel a re-sale, at the risk of the purchaser, although the contract of sale arose under a proceeding nominally in the probate court.

Bray's Executrix vs. Bray, 352

8. Acts of sale *sous sing privé*, and not recorded in the parish where the property is situated, are inadmissible as evidence of title to immoveable property.....*Brosnaham et al. vs. Turner*, 433

9. A bill of sale or written title is not necessary to transfer title to a ship, and parole evidence of a sale may be offered, connected with a written title made in pursuance of it.....*Shields et al. vs. Perry, McClure et al.*, 463

10. The demand of the notary and protest of the note for non-payment, is a sufficient putting in default to pay the price, to authorize a rescission of the sale of property.....*Bourgeat vs. Smith's Syndics*, 467

11. Where it is expressed in the act of sale, that "notes were received in payment," this expression will be taken in reference to other parts of the act, where it is shown a mortgage was retained, &c. In such cases, it is not such a payment as will prevent a rescission of the sale, in case of non-payment of the notes..... *ib.*

12. The filing of notes given for the price of property, in a suit for the rescission of a sale, is a sufficient return of them to authorize the rescission. *ib.*

13. The article 2543 of the Louisiana Code, contemplates the allowance of damages for waste and deterioration of property only, and not for the depreciation in the nominal value at the time of rescinding the sale..... *ib.*

14. The sale of a tract of land claimed under a Spanish grant or other title, is not void because the United States refused to confirm it; or where it has been only confirmed in part, if it appears there has been no disturbance.....*Rightor vs. Kohn et al.*, 501

SHERIFF'S SALE.

1. The sheriff is not bound to give any notice, previous to seizure under a writ of *feri facias*. Notice given on the day of seizure is sufficient; and three days afterwards, the sheriff may advertise the property for sale.

Tompkins vs. Stroud et al., 274

2. After the lapse of more than twenty years, a sheriff's sale will be presumed good and valid.....*Brosnaham et al. vs. Turner*, 433

3. Where a judgment, writ of execution, and sheriff's sale are shown in support of a title, it necessarily creates a strong presumption in favor of the title; and is *prima facie* evidence that the formalities of law have been complied with.....*Same vs. Same*, 442

4. The sheriff may proceed to make further seizures under the same writ of *fieri facias*, if, by the sale of the property first seized, it is insufficient to satisfy the writ..... *Fink vs. Lallande et al.*, 547
5. A sheriff's return is *prima facie* evidence of the legality of his acts; and it becomes the duty of the party attacking the validity of a sheriff's sale, to prove that the formalities required by law were not complied with. *ib.*
6. If a levy be made within or before the return day of the execution, the sheriff may proceed to sell afterwards, even after the return day of the writ. *ib.*
7. The appraisement is immaterial in a sheriff's sale on twelve months' credit, when the property must be sold for whatever it will bring..... *ib.*
8. After a lapse of twenty years, the legal presumption is in favor of the sheriff's acts, and of the legality and validity of the sheriff's sale..... *ib.*

SLANDER.

1. The Louisiana Code, article 2294, which declares, "every act of man, which causes damages to another, obliges him by whose fault it happens, to repair it," does not limit the right to recover, in an action of slander, to words "actionable *per se*," or require proof of special damage when not actionable, according to the common law rule..... *Miller vs. Holstein*, 389
2. So, where the plaintiff was charged with having "sworn falsely," and proved that he always supported a good character, upon which there was a verdict of five hundred dollars: *Held*, that such a charge is in itself presumption of damages, and the law has left the question of damages to the jury, subject to the revision of the court..... *ib.*
3. The courts in Louisiana are not bound by the technical and artificial rules of the common law of slander, but where our law is silent, we may resort to a foreign system for a rule, consonant to reason and equity
Miller vs. Holstein, 395
4. But the court is not prepared to adopt the common law distinction, between words actionable in themselves and words which are not so; and to say a plaintiff is not entitled to recover in an action of slander, unless charged with an indictable offence, without proof of special damages..... *ib.*
5. *Garland, J.*, Actions of slander may be maintained without proving damages, and the party may recover..... *ib.*
6. Every act of man, which causes damage to another, creates responsibility; and when that responsibility is not defined, we must proceed under article 21 of the Louisiana Code, and resort to natural law, reason and usage..... *ib.*
7. *Martin, J.*, dissenting. In actions of slander, there are words which are actionable in themselves, and damages will be given, although none are proved; but there are others not actionable, and no damages will be given, unless some are proved..... *ib.*



8. The judgment should be reversed, and the case remanded, with directions to the judge not to instruct the jury, that "charging the plaintiff falsely and maliciously with moral turpitude, so as to injure his character and standing in society, they should find damages for him," without any special damage being proved.....*Miller vs. Holsten*, 395

SLAVES.

1. Where a slave was hired as an ostler, in a small town, and employed to drive a wagon and haul wood to the tavern, and was accidentally killed: *Held*, that the owner cannot recover his value, as having been improperly used or employed.....*Taylor vs. Andrus*, 15
2. A slave taken to the state of Illinois, the constitution of which forbids slavery and involuntary servitude; and resides there for some time, with the express or implied consent and knowledge of her master, in his family, she is under no obligation to serve him any longer, but became absolutely free, and being once free, could not again be made a slave, by removing her to a slave state.....*Elizabeth Thomas, f. w. c. vs. Generis et al.*, 483

THIRD PERSONS.

1. The law gives no effect to acts of alienation against *third persons* in general, unless they have been recorded. By "*third persons*," must be understood, all persons who are not parties to a contract by which their interest in the thing conveyed is sought to be affected. *Brosnahan et al. vs. Turner* 442
2. So, the debtor whose property is sold at sheriff's sale, or those who claim under him, cannot object that the purchaser's title was not legally conveyed or transferred to the defendant, who claims under it..... *ib.*

TRESPASSERS.

1. Trespassers are jointly liable in actions of tort; and where there are several trespassers, they must all be joined in the same action, and judgment entered in relation to all; and if against them, each one is condemned for his proportion of the damages.....*Loussade vs. Hartman et al.*, 117
2. So, where four persons were sued as co-trespassers, for killing, or causing the death of a slave, and judgment taken against two only: *Held*, that the judgment was erroneous in not including *all*, and against each one for his proportion of the plaintiff's damages; and judgment of non-suit was rendered..... *ib.*

VENDOR AND VENDEE.

1. Where the certificate and act of the notary recites the sale, and specifies the title papers to be delivered, and states, that at the request of the vendor, he had delivered them to one of the vendees, for himself and co-

vendees, who acknowledges the receipt of them, it is sufficient evidence of their delivery on the part of the vendor..... *Rightor vs. Kohn et al.*, 501

2. Where the vendor exhibits his titles before the sale, and they are examined and set forth in the act, the vendees cannot set up any other informalities or nullities in them, than were specified at the time..... *ib.*

3. A mere expression of dissatisfaction of the titles which had been exhibited and accepted, will not authorize the vendee to delay payment; and when not evicted, even if he is in damages, it is no reason to withhold payment, if security is offered..... *ib.*

4. A delivery of the muniments of title to one of several co-vendees, is a sufficient delivery to all of them..... *ib.*

5. Where vendees sue a third person for slander of title, or allege the government has sold part of the premises, but no disturbance is shown, it furnishes no ground to resist payment; they can only require security..... *ib.*

6. Where the vendees affect and mortgage the premises to secure the punctual payment of the price, the vendor has his privilege and mortgage for the payment of any portion of it, as it becomes due..... *ib.*

7. Where a suit has been brought for the premises, and afterwards dismissed, or the plaintiff non-suited, it will not operate a disturbance, so as to authorize the vendee to resist payment..... *ib.*

WILL.

1. Parole evidence is inadmissible to show that all the formalities of a nuncupative will, by *authentic act*, have been fulfilled. It must make full proof on its face..... *Le Blanc vs. Barras's Heirs*, 30

2. Where there are but three witnesses to a will by *authentic act*, express mention must be made in the will, that they *reside* in the place where the will is executed..... *ib.*

3. The formalities required to be pursued in a will by *authentic act*, express mention must be made in the will itself, of their fulfilment, on pain of nullity of the entire instrument..... *ib.*

WITNESS.

1. A witness will not be allowed to testify that he is ignorant of the law in relation to a certain transaction, as his want of knowledge is immaterial, and he is bound to know the law.

Brander et al. vs. Ferriday, Bennell & Co., 296

2. Where witnesses declare on their *voir dire* that they are, and believe themselves interested in the event of the suit, they are incompetent to testify.

Brungard vs. Anderson, 341

WORK BY THE JOB.

PAGE

1. Where a workman by the job demands more than is authorized by his contract, and on being refused, leaves his work uncompleted, the adverse party may immediately employ other workmen to complete the job; and the former one cannot recover, even if he returns and afterwards offers to perform the work.... *McCasken vs. Smith*, 32
2. A workman should be remunerated for his labor, but must, on his part, comply strictly with his contract..... *ib.*
3. A defence that bad shingles were furnished by plaintiff, will not avail the party in his excuse for making a bad roof, when he made no objections to their quality before putting them on..... *Moulton vs. Dros.* 111
4. When a jury passes upon the manner in which a job of work has been performed, their verdict will not be disturbed on slight contradictory evidence..... *ib.*
5. Where the demand exceeds five hundred dollars, for work and labor done and materials furnished in repairing houses, there must be a registry of some written act or agreement, in order to give a privilege on the property or its proceeds in the hands of the administrator.

Taylor et al. vs. Crain's Administrator, 290

